

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

RAYNELL D. ABRAM, )  
                          )  
Plaintiff,            )  
                          )  
                          )       CIV-07-403-HE  
v.                     )  
                          )  
GARFIELD COUNTY      )  
DETENTION CENTER, et al., )  
                          )  
Defendants.           )

SUPPLEMENTAL REPORT AND RECOMMENDATION

Plaintiff, appearing *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. §1983 on April 5, 2007. The matter was referred by United States District Judge Heaton to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). A Report and Recommendation was entered by the undersigned on May 3, 2007, recommending that the cause of action be dismissed due to Plaintiff's failure to comply with the Order entered April 11, 2007, which granted Plaintiff's application for leave to proceed *in forma pauperis* and directed Plaintiff to pay an initial partial filing fee of \$10.33 on or before May 1, 2007. Plaintiff subsequently paid the required partial filing fee, and the matter was re-referred to the undersigned on December 13, 2007, for further initial proceedings.

On December 17, 2007, an Order Requiring Special Report was entered by the undersigned in which Plaintiff was directed to provide the necessary service papers to the

Clerk of the Court within twenty days for issuance. Plaintiff was further advised that proof of service was Plaintiff's responsibility, and Plaintiff was given 120 days from the date of the Order to comply with Fed. R. Civ. P. 4(m) with respect to service of process upon the Defendants. (Doc. # 19).

Thereafter, three items of mail addressed to Plaintiff from the Court, including the Order Requiring Special Report, were returned to the Clerk of the Court marked "Return to Sender," "Refused," "Unable to Forward," and "Return Gone [sic]." These items of mail were returned to the Clerk of the Court on December 21, 207 (Doc. # 21), December 26, 2007 (Doc. # 22), and February 28, 2008 (Doc. # 24).

It is clear from the undeliverable mail sent to Plaintiff at his last known address over the previous three months that Plaintiff has failed to comply with LCvR 5.5(a) requiring written notification to the Clerk of the Court on the form provided by the Clerk of a change of address. Plaintiff also has failed to comply with the Order Requiring Special Report within the allotted time.

A court has the inherent power to dismiss an action for failure to prosecute in order to achieve an orderly and expeditious resolution of cases. Link v. Wabash Railroad Co., 370 U.S. 626, 630-631 (1962). Plaintiff's failure to comply with the Court's Order and procedural rules should, in the exercise of the Court's discretion, be adequate grounds for dismissal of the instant action without prejudice due to Plaintiff's failure to prosecute his action. See Thornton v. Estep, 209 Fed. Appx. 755, 757, 2006 WL 3705038, \*2 (10<sup>th</sup> Cir. Dec. 18, 2006)(unpublished op.)(holding district court did not abuse its discretion by

dismissing *pro se* inmate's petition for failure to prosecute due to inmate's failure to comply with local rule regarding notification to the court of change of address).

RECOMMENDATION

Based on the foregoing findings, it is recommended that the cause of action be *sua sponte* dismissed without prejudice for failure to prosecute. Plaintiff is advised of his right to file an objection to this Supplemental Report and Recommendation with the Clerk of this Court by April 21<sup>st</sup>, 2008, in accordance with 28 U.S.C. § 636 and LCvR 72.1. The Plaintiff is further advised that failure to make timely objection to this Supplemental Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. Moore v. United States of America, 950 F.2d 656 (10th Cir. 1991).

This Supplemental Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter, and any pending motion not specifically addressed herein is denied.

ENTERED this 1<sup>st</sup> day of April, 2008.

  
GARY M PURCELL  
UNITED STATES MAGISTRATE JUDGE